Appendix B

USEPA Guidance Memos on Redesignations

USEPA Calcagni Memo on Process for SIP Submittals

MEMORANDUM

SUBJECT: Processing of State Implementation Plan (SIP) Submittals

FROM: John Calcagni, Director
Air Quality Management Division, OAQPS (MD-15)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
Director, Air, Radiation, and Toxics Division, Region III
Director, Air and Radiation Division, Region V
Director, Air, Pesticides, and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

This memorandum provides guidance concerning the processing of SIP submittals. In general, there are three situations that can occur related to each required submittal: the State may fail to submit the required plan, the State may make a submittal that is not complete, or the State may make a complete submittal. Once a State submits a SIP and the Environmental Protection Agency (EPA) has determined that the submittal is complete, EPA must either approve or disapprove the submittal within a specified time period. However, if the State fails to make a required submittal or makes a submittal that is determined to be incomplete, the sanctions and Federal implementation plan (FIP) provisions of sections 179 and 110(c), respectively, will be triggered. In addition, disapproval of a submittal also triggers the sanctions and FIP provisions. These provisions are discussed in further detail in this memorandum.

There are, however, three alternatives to full approval or full disapproval of a complete SIP submittal: partial approval,

limited approval, and conditional approval. Each of these is discussed in more detail below along with some guidance as to when each might be used. In addition, Attachment 1 to this memorandum contains several examples of how these may be used. Attachment 2 to this memorandum is a table that summarizes the requirements discussed below.

Partial Approval/Disapproval

Section 110(k)(3) of the amended Clean Air Act (Act) addresses the situation in which an entire submittal, or a separable portion of a submittal, meets all applicable requirements of the Act. Where the entire submittal meets all the requirements of the Act, EPA will fully approve the entire submittal. In the case where a separable portion of the submittal meets all of the applicable requirements, partial approval may be used to approve that part of the submittal and disapprove the remainder. It is important that the two parts of the submittal be separable. By separable, EPA means that the action it anticipates taking will not result in the approved rule(s) being more stringent than the State anticipated. See Bethlehem Steel Corp. v. Gorsuch, 742 F. 2d 1028 (7th Cir. 1984); Indiana and Michigan Elec. Co. v. U.S. E.P.A., 733 F. 2d 489 (7th Cir. 1984). For example, EPA cannot approve part of a submittal that specifies control measures and disapprove the part that specifies the test methods associated with those control measures. The EPA has frequently taken a partial approval approach in the past to process groups of rules that are submitted together. The EPA can approve some of the rules and disapprove the rest as long as the rules that are disapproved do not affect those that are approved. The disapproval of any part of a required SIP submittal starts the clocks discussed above for sanctions and FIP's.

Limited Approval/Disapproval

In some cases, a submittal may contain certain provisions that meet the applicable requirements of the Act along with other provisions that do not meet the requirements, and the provisions are not separable. Although the submittal may not meet all of the applicable requirements, EPA may want to consider whether the submittal as a whole has a strengthening effect on the SIP. If that is the case, limited approval may be used to approve a rule that strengthens the existing SIP as representing an improvement over what is currently in the SIP and as meeting some of the applicable requirements of the Act.

The Act does not expressly provide for limited approvals.

Rather, EPA is using its "gap-filling" authority under section 301(a) of the Act in conjunction with the section 110(k)(3) approval provision to interpret the Act to provide for this type of approval action.

Through a limited approval, EPA would concurrently, or within a reasonable time thereafter, disapprove the rule, under the relevant provision(s) of Part D, for not meeting all of the applicable requirements of the Act. As with the limited approval action the limited disapproval is a rulemaking action, and it is subject to notice and comment. Under section 110(k), EPA must take final rulemaking action on SIP submittals within 12 months of the date EPA determines the submittal is complete or the submittal is automatically deemed to be complete if EPA fails to make a completeness determination. As a general matter, although the statute directs EPA to act within that timeframe, EPA's failure to finalize the disapproval portion of the action within that 12-month timeframe will not affect the validity of any prior or subsequent limited approval or limited disapproval.[1] The EPA's failure to take action prior to the expiration of the 12-month period could, however, subject EPA to a lawsuit to compel such an action.

A key distinction between the limited approval and a partial approval is that under a limited approval EPA's approval action goes to the entire rule. In other words, although portions of a rule prevent EPA from finding that the rule meets a certain requirement of the Act, EPA believes that the rule, as a whole, strengthens the SIP. Therefore, EPA approves the entire rule--even those portions that prohibit full approval. Likewise, when EPA issues the limited disapproval, the disapproval applies to the entire rule as failing to meet a specific requirement of the Act. The rule remains a part of the SIP, however, under the limited disapproval, because the rule strengthens the SIP. The disapproval only applies to whether the submittal meets a specific requirement of the Act and does not affect incorporation of the rule into the approved, federally enforceable SIP.

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[1] The March 22, 1991 memorandum from John Calcagni discussed the potential impact of Abramowitz v. U.S. E.P.A., 832, F. 2d 1071 (9th Cir. 1988), on EPA's decision to split the approval and disapproval portions of a limited approval. After reevaluating that case, we believe it may have a narrower impact than initially described and, therefore, generally would not impact the timing of limited approval/disapproval actions.

The primary advantage to using the limited approval approach is to make the State submittal federally enforceable and to increase the SIP's potential to achieve additional reductions. Therefore, limited approval should not be used to approve any rule that is unenforceable for all situations--for example, a rule that lacks a test method. These rules and any other rules that do not have an overall strengthening effect on the SIP should be disapproved. Limited approval can be used, however,

where the rule is unenforceable for some limited number of situations but is enforceable for the majority of situations, if the rule, as a whole, strengthens the SIP.

The disapproval coinciding with (or following) the limited approval also starts the sanctions and FIP clocks discussed above. With the limited approval EPA may or may not have a commitment from the State to correct the deficiency. The EPA may choose to use the limited approval approach (instead of conditional approval) in the case where the State has submitted a commitment as part of a rule but EPA has reason to believe that the State will not be able to meet the commitment (as discussed below). Where a limited approval/disapproval approach is taken, the notice of proposed rulemaking (NPR) should clearly identify which requirements have not been met and what action would be required on the part of the State to meet those requirements.

Conditional Approval

Under section 110(k)(4) of the Act EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures within 1 year from the date of approval. If the State fails to meet its commitment within the 1-year period, the approval is treated as a disapproval. We expect that conditional approvals will be used only in rare situations that merit special consideration. We will evaluate specific types of SIP submittals [e.g., reasonably available control technology (RACT) catch-ups, particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10) SIP's] to determine whether certain elements of that type of submittal, or that type of submittal as a whole, merit conditional approval. For this reason and to ensure consistency, Regions should not use conditional approvals without input from Headquarters as to whether such an approach is appropriate. Furthermore, as any statutory deadline approaches, we may issue guidance regarding the appropriate use of conditional approval with respect to that specific requirement.

Once a determination has been made that a specific type of submittal can be considered for conditional approval, Regions

must make a determination of whether an individual State submittal should be conditionally approved. The first consideration should be whether the State has made (or agrees to make) a commitment to adopt specific enforceable measures within 1 year of EPA approval. The commitment must be made in writing by the party responsible for adopting the specified measures before the plan is conditionally approved, and the commitment must be submitted by the State.[2]

In addition, to the extent that the commitment materially alters the existing rule (in respects that the public could not reasonably have anticipated would result from the public review of the existing rule), or is a commitment to adopt an entire rule or set of rules, the commitment must be a SIP revision submittal by the State. In many cases, the determination of whether the commitment materially alters the underlying rule may be based on whether a similar issue was raised during the earlier State proceedings on the submitted rule. In general, each commitment will need to be examined to determine whether it materially alters the submitted rule. As with any SIP revision, in order for EPA to accept the commitment as a SIP revision, the State must have provided notice and public hearing on the submitted commitment. However, EPA has the discretion to parallel process commitments and in limited circumstances may propose conditional approval of the commitment and allow the State process to proceed on a parallel track.

As a general matter, the greater the extent to which a submittal is lacking in important plan elements, the less appropriate the use of conditional approval may be. It should be noted, however, that there may be circumstances under which EPA would accept a SIP revision consisting of a commitment only (without specifically adopted rules) as a candidate for conditional approval. In such cases, the commitment should also be accompanied by a work plan detailing any specific measures to be adopted, the steps that will be taken to adopt the measures,

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[2] Although the commitment must identify the measures to be adopted and contain a schedule for adopting such measures, it is not necessary for the commitment itself to be enforceable in a State court.

and the schedule for adoption of those measures. As stated earlier, a submittal that consists entirely of a commitment will be considered a SIP revision that is subject to the State process for submitting SIP revisions, e.g., notice and a public hearing.

Where the submittal contains specifically adopted rules that need some revisions or corrections to be fully-approvable, the commitment may not need to be as comprehensive. The commitment should, however, be as explicit as possible concerning the measures that will be adopted, the steps that will be taken to adopt the measures, and the schedule for adoption of those measures.

Because the conditional approval relies on a commitment from the State, EPA would need some level of confidence that the State would be able to meet such a commitment. In making a determination as to whether a State could reasonably be expected to meet its commitment, EPA would need to consider a number of factors such as:

- the amount of technical work necessary for the measures to be adopted;
- whether adoption of the measures is expected to be controversial;
- the average length of the State adoption process;
- how far along in the process the State is; and
- the State's past track record.

It should be noted that these are only some of the factors that should be considered. Each Region, in making a determination regarding the credibility of the State's commitment, may have to look at a number of other factors. The Region should clearly explain, either in the NPR or in a technical support document, the rationale for these determinations.

In addition to the determination of whether the State's commitment is credible, the Region must make a determination as to whether it is appropriate to conditionally approve a revision on the merits of that revision. Conditional approval might typically be used in the same types of situations as the limited approval. As with the limited approval, one of the main advantages of the conditional approval approach is to make the State submittal (where the submittal contains control requirements and not just a commitment to adopt enforceable measures) federally enforceable and to increase its potential to achieve additional reductions. Because the conditionally approved submittal will become a part of the SIP, the Region

should be certain that the approval of the commitment will not weaken the existing SIP. The Region may also want to consider when the plan (or plan element) that has been submitted was due.

The NPR for a conditional approval should clearly identify which requirements are the subject of the commitment and, therefore, have not been met. In addition, both the NPR and the State's commitment should clearly identify what action is required on the part of the State. Unlike the limited approval/disapproval, the conditional approval does not immediately start the sanctions and FIP clocks. These clocks start if and when the approval is converted to a disapproval.

There are at least two ways that the conditional approval may be converted to a disapproval.[3] First, if the State fails to adopt and submit the specified measures by the end of 1 year (from the final conditional approval), or fails to submit anything at all, EPA will have to issue a finding of disapproval but will not have to propose the disapproval. That is because in the original proposed and final conditional approval, EPA will have provided notice and an opportunity for comment on the fact that EPA would directly make the finding of disapproval (by letter) if the State failed to submit anything.[4] Therefore, at the end of 1 year from the conditional approval, the Regional Administrator (RA) will send a letter to the State finding that it had failed to meet its commitment and that the SIP submittal is disapproved. The 18-month clock for sanctions and the 2-year clock for a FIP start as of the date of the letter. Subsequently, a notice to that effect will be published in the Federal Register, and appropriate language will be inserted in the Code of Federal Regulations. Similarly, if EPA receives a submittal addressing the commitment but determines that the submittal is incomplete, the RA will send a letter to the State making such a finding. As with the failure to submit, the sanctions and FIP clocks will begin as of the date of the finding

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[3] It should be noted that this disapproval can be a limited approval/disapproval. In some cases, the Regions may want to use such an approach to retain the enforceability of control measures. The NPR should indicate if this approach is planned.

[4] To provide for this contingency, in the final conditional approval, EPA would need to provide, for example, "If the State fails to make a submittal or makes only an incomplete submittal during the time period for submittal of the rule, EPA will issue a letter to the State which converts the conditional approval to a disapproval."

letter.

Second, where the State does make a complete submittal by the end of the 1-year period, EPA will have to evaluate that submittal to determine if it may be approved and take final action on the submittal within 12 months after the date EPA determines the submittal is complete. If the submittal does not adequately address the deficiencies that were the subject of the conditional approval, and is therefore not approvable, EPA will have to go through notice-and-comment rulemaking to disapprove the submittal. The 18-month clock for sanctions and the 2-year clock for a FIP start as of the date of final disapproval. If EPA determines that the rule is approvable, EPA will propose approval of the rule. In either instance, whether EPA finally approves or disapproves the rule, the conditional approval remains in effect until EPA takes its final action.

It should be noted that EPA will conditionally approve a certain rule only once. Subsequent submittals of the same rule that attempt to correct the same specifically identified problems will not be eligible for conditional approval.

Sanctions and FIP Requirements

Actions that Trigger the Sanctions and FIP Requirements

The actions EPA has the authority to take under the sanctions and FIP provisions of the Act correspond to the different steps EPA must follow as it reviews and processes SIP submittals. As discussed previously, the Act in section 179[5] requires EPA to impose sanctions based on four types of actions (findings[6]) provided in section 179(a):

(1) a finding that a State has failed to submit a SIP, a

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[5] Section 110(m) grants EPA broad authority to apply either sanction listed in section 179(b) " . . . at any time (or at any time after) a finding . . ." under section 179(a) with respect to any portion of the State, with certain exceptions. This memorandum is intended to address the application of sanctions under section 179. The section 179 sanctions apply only to the area for which a finding has been made.

[6] Although subsections (1)-(4) refer to findings, determinations and disapprovals, for simplicity these four actions will be referred to as "findings."

SIP element,[7] or has submitted a SIP or SIP element that does not satisfy the completeness criteria;

(2) that EPA disapproval of a SIP submission for a nonattainment area based on its failure to meet one or more elements required by the Act;

(3) a determination that the State has not made any other submission, has made an inadequate submission (as required by the Act), or that EPA disapproves such a submission; or

(4) a finding that a requirement of an approved plan is not being implemented.

Under section 110(c)(1), EPA is required to promulgate a FIP based on two types of findings:[8]

(1) a finding that a State has failed to make a required submittal or that a submittal does not satisfy the minimum completeness criteria established under section 110(k)(1)(A), or

(2) the EPA disapproval of a SIP submittal in whole or in part.

The Sanctions and FIP Clocks

Although EPA may make any of the findings discussed above to trigger the 179(a) sanctions and 110(c)(1) FIP requirements, these findings do not require the immediate imposition of sanctions or promulgation of a FIP. Instead the Act provides a "clock" for sanctions and FIP's. For plan submittals required under Part D or in response to a SIP call, section 179(a) allows

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[7] Since EPA does not intend to issue a list of such elements per se, to ensure that such findings are consistently applied, findings of failure to submit SIP elements should be decided on a case-by-case basis in conjunction with Headquarters. The basis for the finding should be clear and well-supported.

[8] Since the deficiency is a failure to implement after a State has submitted a plan and EPA has approved it, it is unnecessary for this finding to trigger a requirement that EPA develop the required rule (i.e., prepare a FIP) and section 110(c)(1) does not require it.

for up to 18 months for the State to correct the deficiency that is the subject of a finding or disapproval before EPA is required to impose sanctions. Section 110(c)(1) provides for up to 2 years for the State to correct the deficiency and for EPA to approve a new submittal before EPA is obligated to promulgate a FIP.

The Administrator has delegated the authority to make findings of failure to submit to the RA's. The findings are made via letters from the RA's to State governors or other State officers to whom authority has been delegated. The letter itself triggers the sanctions and FIP clocks. For disapprovals, the Federal Register notice in which EPA takes final action triggers the sanctions and FIP clocks. Findings of nonimplementation have traditionally been processed as rulemaking actions through Headquarters. The sanctions clock will start when EPA makes a finding of nonimplementation in the Federal Register after soliciting comment on the proposal (the FIP clock is not triggered by such a finding). Although the findings of failure to submit and SIP disapproval start both the sanctions and FIP clocks, what is required to stop the clocks differs; therefore, they are discussed separately. Note that in some cases the sanctions clock may be stopped while EPA remains under an obligation to promulgate a FIP.

Sanctions Clock

Under section 179(a), in order to stop the sanctions clock, the State must correct the "deficiency" prompting the finding. The EPA must apply one of the two sanctions available under section 179(b) within 18 months after the date of the finding and both sanctions at 24 months, unless the deficiency has been corrected. Section 179(a) also requires EPA to apply both sanctions after 18 months if EPA finds a lack of good faith on the part of the State.

Attachment 3 provides seven scenarios illustrating how the sanctions clock operates, including examples of what constitutes a deficiency correction (and hence a stopping of the clock). In brief, for purposes of the sanctions clock, findings of failure to submit plans or complete plans are corrected when EPA finds the submittal complete[9] [although the FIP clock is still

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[9] Where EPA made a finding of failure to submit and subsequently finds that the State has made a complete submittal for the plan or plan element that was the subject of the finding, the letter that makes the finding of completeness will notify the State that the sanctions clock is stopped as of the date of that

running (see FIP clock discussion)] and disapprovals are corrected when EPA takes final rulemaking action approving the plan. In addition, findings of nonimplementation are corrected when EPA makes a finding in the Federal Register that the State is now implementing that provision.

FIP Clock

Under the FIP provisions, either a SIP must be approved or a FIP must promulgated within 2 years of one of the two findings discussed above. In other words, EPA must approve the State submittal in order to stop the FIP clock. Where the sanctions and FIP clocks were started by EPA disapproval of a plan, the clocks will run concurrently. In this case, to correct the deficiency for purposes of the sanctions clock, the State must make a submittal which EPA finds approvable. Such a determination is not made until EPA issues a final approval of the plan. Final approval of a plan is also what is needed to stop the FIP clock. Attachment 3 provides seven scenarios of how the FIP clock operates.

Available Sanctions

For plan submittals required under Part D or in response to a SIP call, if the State does not correct the specific deficiency within the 18-month period allowed under section 179(a), EPA must apply at least one of the two sanctions available under section 179(b)[10] as described:

(1) Highway funding sanctions. The EPA may impose a prohibition on the approval by the Secretary of Transportation of certain projects, or the awarding of certain grants.

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letter. The Region should periodically announce any such findings that represent corrections of failure to submit in the Federal Register.

[10] In addition, section 179(a) provides for an air pollution grant sanction that applies to grants EPA may award under section 105. However, since it is not a sanction provided under section 179(b), it is not one of the sanctions EPA must impose after the 18-month period.

(2) Offset sanctions. A ratio of at least 2-to-1 will be required for emissions reductions within the nonattainment area to offset emissions from new or modified major facilities (as required under section 173).

Regions should determine which of the sanctions will be applied at the 18- and 24-month milestones on a case-by-case basis. As discussed previously, EPA must apply both sanctions at the 18-month mark if it finds there is a lack of good faith effort. Such a determination should be made on a case-by-case basis in consultation with Headquarters. In addition, once one of the sanctions has been imposed, EPA must impose the second sanctions if the deficiency has not been corrected within 6 months (regardless of the State's efforts). Headquarters will issue a proposal of the sanctions and the Regional Office will issue the final rule imposing sanctions.

Conclusion

General comments on this memorandum should be directed to Pam Johnson of the Regional Operations Branch at (919) 541-5270. Comments related specifically to ozone or carbon monoxide should be directed to Carla Oldham at (919) 541-3347. Comments related to particulate matter, sulfur dioxide, or lead should be directed to Chris Stoneman at (919) 541-0823.

cc: Regional Air Counsels, Regions I-X
Chief, Air Programs Branch, Regions I-X
Jane Armstrong, OMS (Ann Arbor)
William Becker, STAPPA/ALAPCO
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Tom Helms, AQMD (MD-15)
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Attachment 1

Example 1

A State submits a SIP revision containing four rules: (1) control requirements for bulk gasoline plants, (2) control requirements for gasoline dispensing facilities (Stage I), (3) leak detection requirements for gasoline tanks trucks, and (4) test methods that apply to these three rules. The EPA review of the rules shows that all of the rules except the Stage I rule meet the applicable requirements of the Act. The Stage I rule fails to require submerged fill loading for all storage tanks. This is inconsistent with EPA's RACT guidance and the State has failed to propose an alternative that it has demonstrated is RACT for the applicable sources.

Partial Approval

Under the partial approval option, EPA can approve the rules for bulk terminals and tank truck leaks, approve the test methods, and disapprove the Stage I rule. These rules are separable from the Stage I rule. Disapproval of the Stage I rule does not affect the stringency of the other three rules. Therefore, the other three rules may be approved under this provision. However, the submittal as a whole would only be partially approved.

Limited Approval of Stage I Rule

Under the limited approval approach, EPA could approve the Stage I rule as being an improvement over what is currently in the SIP and, at the same time or within a reasonable time after the approval (but no later than 12 months after the submittal is complete), disapprove the rule because it does not represent RACT. The sanctions and FIP clocks would start upon the final disapproval of the rule.

Conditional Approval

Alternatively, EPA could conditionally approve the Stage I rule if the State committed to revise the rule, within 1 year of the conditional approval, to require submerged fill loading. If the State then failed to make such a revision, EPA would issue a finding converting the conditional approval to a disapproval.

Example 2

If in example 1 the first three rules (containing control requirements) are all approvable but the fourth (containing the test methods) is either deficient or has not been submitted, then the submittal would have to be handled differently. Because a test method is critical in determining the stringency of a control requirement and is needed for the requirements to be enforceable, these rules cannot be considered separable and,

therefore, partial approval would not be an option. In addition, because the control requirements will not be enforceable without a test method, it would not be appropriate to use either the limited or conditional approval approach.

Example 3

A State submits a SIP revision that contains four PM-10 rules, two for controlling emissions of fugitive dust and two for the control of residential wood combustion. The rules represent reasonable available control measures (RACM) and include (1) paving or stabilizing unpaved roads, (2) developing a traffic reduction plan for unpaved roads, (3) a mandatory episode curtailment program for residential wood combustion, and (4) encouraging changeover to new source performance standards and wood stoves. The third rule is deficient in that it does not provide a communication strategy on which the curtailment program is dependent.

Partial Approval

The EPA may approve the three rules which satisfy RACM but disapprove the episode curtailment program as failing to meet the RACM requirement. These rules are separable because disapproval of the curtailment program will not have any effect on the stringency or enforceability of the remaining rules.

Limited Approval

The EPA may approve the episode curtailment plan as strengthening the SIP by providing enforceable measures in a SIP which currently has no curtailment program. At the same time or within a reasonable time after the approval (but no later than 12 months after the submittal is complete), EPA must disapprove the rule as not representing RACM. Final disapproval of the rule would start the sanctions and FIP clocks.

Conditional Approval

The EPA may conditionally approve the rule if the State submits a commitment to submit a revised rule within 1 year of the approval. If the State then failed to make such a revision, EPA would issue a finding converting the conditional approval to a disapproval.

Attachment 2

Type of Approval	Separability	Commitment	Act Requirements	SIP Strengthening
Partial	rules must be separable	no commitment necessary	part to be approved must meet all applicable requirements	part to be approved must strengthen the SIP
Limited	deficient portion of submittal is not separable	no commitment necessary	does not have to meet all applicable requirements	submittal as a whole must strengthen the SIP
Conditional	deficient portion of submittal is not separable	State must commit to correct within 1 year	does not have to meet all applicable requirements	submittal as a whole must strengthen the SIP

Attachment 3: Sanctions and FIP Clocks Scenarios

Scenario 1: The EPA receives a SIP and finds it incomplete prior to the statutory due date of the SIP.

Although a finding that the State submitted an incomplete SIP is one of the section 179(a) findings, the sanctions and FIP clocks will not begin to run until after a submittal is due. This is because the finding must be based on the failure to submit a complete required SIP or SIP element and the submittal is not required until it is due under the statute. If a SIP submitted prior to a due date is still incomplete by the due date, then EPA will notify the State by letter that the plan remains incomplete and that the 18-month sanctions clock and the 2-year FIP clock have started.

Scenario 2: The EPA receives a SIP and finds it incomplete on or after the statutory due date of the SIP.

If EPA receives a SIP and finds it incomplete pursuant to section 110(k) on or after the statutory due date of the SIP, then, as in scenario 1, the State has failed to make a complete submittal under section 179(a). The EPA will notify the State by letter that the plan is incomplete and that the 18-month sanctions clock and the 2-year FIP clock have started.

Scenario 3: The EPA receives no submittal at the due date.

If EPA receives no submittal from a State to meet a statutory due date, then it may make a finding of failure to submit under section 179(a)(1), triggering the 18-month sanctions clock and the 2-year FIP clock.

Scenario 4: After the due date, EPA receives a SIP for which it originally made a finding of failure to submit.

Upon receiving the plan, the sanctions clock will continue to run during the completeness review and be stopped if EPA finds the plan complete and continue if EPA finds the plan incomplete. If the 18 months elapse during the time EPA is doing its completeness review, EPA will not impose sanctions unless it determines the plan incomplete. If sanctions have been imposed prior to the State's submittal, the sanctions will remain in place until EPA determines the submittal complete.

The FIP clock continues to run while EPA makes its completeness determination.

Scenario 5: The EPA originally makes a finding of failure to submit, then receives a SIP, finds it complete, but disapproves it in final rulemaking.

Upon a determination that the SIP is complete, the State corrects the deficiency that prompted the finding of nonsubmittal and the sanctions clock stops. A new sanctions clock will start upon the final SIP disapproval rulemaking. The new sanctions clock will not stop until EPA has taken final action to approve the revised SIP submittal.

Even after the submittal is determined to be complete, EPA remains under obligation to promulgate a FIP. Therefore, the disapproval of the SIP does not start a new FIP clock.

Scenario 6: The EPA originally makes a finding of failure to submit, then receives a SIP, finds it complete, and approves it in final rulemaking.

Upon a determination that the SIP is complete, the State corrects the deficiency prompting the finding of nonsubmittal and the sanctions clock stops. The EPA remains under obligation to promulgate a FIP until EPA takes final rulemaking action to approve the SIP.

Scenario 7: The EPA finds that a State has failed to implement a SIP or SIP provision.

The EPA will make a finding of nonimplementation in the Federal Register after soliciting comment on the proposal. The sanctions clock will start upon EPA taking final action and stop when EPA makes a finding in the Federal Register after notice-and-comment rulemaking that the State has corrected the deficiency that prompted the finding. A finding of nonimplementation does not start a FIP clock.

USEPA Calcagni Memo on Procedures to Redesignate

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

4 SEP 1992

MEMORANDUM

SUBJECT: Procedures for Processing Requests to Redesignate Areas to Attainment

FROM: John Calcagni, Director
Air Quality Management Division (MD-15)

TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
Director, Air and Waste Management Division, Region II
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Director, Air and Radiation Division, Region V
Director, Air, Pesticides and Toxics Division, Region VI
Director, Air and Toxics Division, Regions VII, VIII, IX, and X

Purpose

The Office of Air Quality Planning and Standards (OAQPS) expects that a number of redesignation requests will be submitted in the near future. Thus, Regions will need to have guidance on the applicable procedures for handling these requests, including maintenance plan provisions. This memorandum, therefore, consolidates the Environmental Protection Agency's (EPA's) guidance regarding the processing of requests for redesignation of nonattainment areas to attainment for ozone (O_3), carbon monoxide (CO), particulate matter (PM-10), sulfur dioxide (SO_2), nitrogen dioxide (NO_2), and lead (Pb). Regions should use this guidance as a general framework for drafting Federal Register notices pertaining to redesignation requests. Special concerns for areas seeking redesignation from unclassifiable to attainment will be addressed on a case-by-case basis.

Background

Section 107(d)(3)(E) of the Clean Air Act, as amended, states that an area can be redesignated to attainment if the following conditions are met:

1. The EPA has determined that the national ambient air quality standards (NAAQS) have been attained.

2. The applicable implementation plan has been fully approved by EPA under section 110(k).

3. The EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The State has met all applicable requirements for the area under section 110 and Part D.

5. The EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A.

Each of these criteria is discussed in more detail in the following paragraphs. Particular attention is given to maintenance plan provisions at the end of this document since maintenance plans constitute a new requirement under the amended Clean Air Act. Exceptions to the guidance will be considered on a case-by-case basis.

1. Attainment of the Standard

The State must show that the area is attaining the applicable NAAQS. There are two components involved in making this demonstration which should be considered interdependently. The first component relies upon ambient air quality data. The data that are used to demonstrate attainment should be the product of ambient monitoring that is representative of the area of highest concentration. These monitors should remain at the same location for the duration of the monitoring period required for demonstrating attainment. The data should be collected and quality-assured in accordance with 40 CFR 58 and recorded in the Aerometric Information Retrieval System (AIRS) in order for it to be available to the public for review. For purposes of redesignation, the Regional Office should verify that the integrity of the air quality monitoring network has been preserved.

For PM-10, an area may be considered attaining the NAAQS if the number of expected exceedances per year, according to 40 CFR 50.6, is less than or equal to 1.0. For O_3, the area must show that the average annual number of expected exceedances, according to 40 CFR 50.9, is less than or equal to 1.0 based on data from all monitoring sites in the area or its affected downwind environs. In making this showing, both PM-10 and O_3 must rely on 3 complete, consecutive calendar years of quality-assured air quality monitoring data, collected in accordance with 40 CFR 50, Appendices H and K. For CO, an area may be considered attaining the NAAQS if there are no violations, as determined in accordance

with 40 CFR 50.8, based on 2 complete, consecutive calendar years of quality-assured monitoring data. For SO_2, according to 40 CFR 50.4, an area must show no more than one exceedance annually and for Pb, according to section 50.12, an area may show no exceedances on a quarterly basis.

The second component relies upon supplemental EPA-approved air quality modeling. No such supplemental modeling is required for O_3 nonattainment areas seeking redesignation. Modeling may be necessary to determine the representativeness of the monitored data. For pollutants such as SO_2 and CO, a small number of monitors typically is not representative of areawide air quality or areas of highest concentration. When dealing with SO_2, Pb, PM-10 (except for a limited number of initial moderate nonattainment areas), and CO (except moderate areas with design values of 12.7 parts per million or lower at the time of passage of the Clean Air Act Amendments of 1990), dispersion modeling will generally be necessary to evaluate comprehensively sources' impacts and to determine the areas of expected high concentrations based upon current conditions. Areas which were designated nonattainment based on modeling will generally not be redesignated to attainment unless an acceptable modeling analysis indicates attainment. Regions should consult with OAQPS for further guidance addressing the need for modeling in specific circumstances.

2. State Implementation Plan (SIP) Approval

The SIP for the area must be fully approved under section 110(k),[1] and must satisfy all requirements that apply to the area. It should be noted that approval action on SIP elements and the redesignation request may occur simultaneously. An area cannot be redesignated if a required element of its plan is the subject of a disapproval; a finding of failure to submit or to implement the SIP; or partial, conditional, or limited approval. However, this does not mean that earlier issues with regard to the SIP will be reopened. Regions should not reconsider those things that have already been approved and for which the Clean Air Act Amendments did not alter what is required. In contrast, to the extent the Amendments add a requirement or alter an existing requirement so that it adds something more, Regions should consider those issues. In addition, requests from areas known to be affected by dispersion techniques which are inconsistent with EPA guidance will continue to be considered unapprovable under section 110 and will not qualify for redesignation.

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[1]Section 110(k) contains the requirements for EPA action on plan submissions. It addresses completeness, deadlines, full and partial approval, conditional approval, and disapproval.

3. Permanent and Enforceable Improvement in Air Quality

The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable.[2] Attainment resulting from temporary reductions in emission rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

In making this showing, the State should estimate the percent reduction (from the year that was used to determine the design value for designation and classification) achieved from Federal measures such as the Federal Motor Vehicle Control Program and fuel volatility rules as well as control measures that have been adopted and implemented by the State. This estimate should consider emission rates, production capacities, and other related information to clearly show that the air quality improvements are the result of implemented controls. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

4. Section 110 and Part D Requirements

For the purposes of redesignation, a State must meet all requirements of section 110 and Part D that were applicable prior to submittal of the complete redesignation request. When evaluating a redesignation request, Regions should not consider whether the State has met requirements that come due under the Act after submittal of a complete redesignation request.[3]

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[2]This is consistent with EPA's existing policy on redesignations as stated in an April 21, 1983 memorandum titled "Section 107 Designation Policy Summary." This memorandum states that in order for an area to be redesignated to attainment, the State must show that "actual enforceable emission reductions are responsible for the recent air quality improvement." This element of the policy retains its validity under the amended Act pursuant to section 193. [Note: other aspects of the April 21, 1983 memorandum have since been superseded by subsequent memorandums; interested parties should consult with OAQPS before relying on these aspects, e.g. those relating to required years of air quality data.]

[3]Under section 175A(c), however, the requirements of Part D remain in force and effect for the area until such time as it is redesignated. Upon redesignation to attainment, the requirements that became due under section 175A(c) after submittal of the complete redesignation request would no longer be applicable.

However, any requirements that came due prior to submittal of the redesignation request must be fully approved into the plan at or before the time EPA redesignates the area.

To avoid confusion concerning what requirements will be applicable for purposes of redesignation, Regions should encourage States to work closely with the appropriate Regional Office early in the process. This will help to ensure that a redesignation request submitted by the State has a high likelihood of being approved by EPA. Regions should advise States of the practical planning consequences if EPA disapproves the redesignation request or if the request is invalidated because of violations recorded during EPA's review. Under such circumstances, EPA does not have the discretion to adjust schedules for implementing SIP requirements. As a result, an area may risk sanctions and/or Federal implementation plan implementation that could result from failure to meet SIP submittal or implementation requirements.

a. Section 110 Requirements

Section 110(a)(2) contains general requirements for nonattainment plans. Most of the provisions of this section are the same as those contained in the pre-amended Act. We will provide guidance on these requirements as needed.[4]

b. Part D Requirements

Part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS. The general requirements are followed by a series of subparts specific to each pollutant. The general requirements appear in subpart 1. The requirements relating to O_3, CO, PM-10, SO_2, NO_2, and Pb appear in subparts 2 through 5. In those instances where an area is subject to both the general nonattainment provisions in subpart 1 as well as one of the pollutant-specific subparts, the general provisions may be subsumed within, or superseded by, the more specific requirements of subparts 2 through 5.

If an area was not classified under section 181 for O_3, or section 186 for CO, then that area is only subject to the provisions of subpart 1, "Nonattainment Areas in General." In addition to relevant provisions in subpart 1, an O_3 and CO area, which is classified, must meet all applicable requirements in subpart 2, "Additional Provisions for Ozone Nonattainment Areas," and subpart 3, "Additional Provisions for Carbon Monoxide

[4]General guidance regarding the requirements for SIP's may be found in the "General Preamble to Title I of the 1990 Clean Air Act Amendments," 57 FR 13498 (April 16, 1992).

Nonattainment Areas," respectively, before the area may be redesignated to attainment. All PM-10 nonattainment areas (whether classified as moderate or serious) must similarly meet the applicable general provisions of subpart 1 and the specific PM-10 provisions in subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas." Likewise, SO_2, NO_2, and Pb nonattainment areas are subject to the applicable general nonattainment provisions in subpart 1 as well as the more specific requirements in subpart 5, "Additional Provisions for Areas Designated Nonattainment for Sulfur Oxides, Nitrogen Dioxide, and Lead."

i. Section 172(c) Requirements

This section contains general requirements for nonattainment plans. A thorough discussion of these requirements may be found in the General Preamble to Title I [57 FR 13498 (April 16, 1992)]. The EPA anticipates that areas will already have met most or all of these requirements to the extent that they are not superseded by more specific Part D requirements. The requirements for reasonable further progress, identification of certain emissions increases, and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard. The requirements for an emission inventory will be satisfied by the inventory requirements of the maintenance plan. The requirements of the Part D new source review program will be replaced by the prevention of significant deterioration (PSD) program once the area has been redesignated. However, in order to ensure that the PSD program will become fully effective immediately upon redesignation, either the State must be delegated the Federal PSD program or the State must make any needed modifications to its rules to have the approved PSD program apply to the affected area upon redesignation.

ii. Conformity

The State must work with EPA to show that its SIP provisions are consistent with section 176(c)(4) conformity requirements. The redesignation request should include conformity procedures, if the State already has these procedures in place. Additionally, we currently interpret the conformity requirement to apply to attainment areas. However, EPA has not yet issued its conformity regulations specifying what areas are subject to the conformity requirement. Therefore, if a State does not have conformity procedures in place at the time that it submits a redesignation request, the State must commit to follow EPA's conformity regulation upon issuance, as applicable. If the State submits the redesignation request subsequent to EPA's issuance of the conformity regulations, and the conformity requirement became applicable to the area prior to submission,

the State must adopt the applicable conformity requirements before EPA can redesignate the area.

5. Maintenance Plans

Section 107(d)(3)(E) of the amended Act stipulates that for an area to be redesignated, EPA must fully approve a maintenance plan which meets the requirements of section 175A. A State may submit both the redesignation request and the maintenance plan at the same time and rulemaking on both may proceed on a parallel track. Maintenance plans may, of course, be submitted and approved by EPA before a redesignation is requested. However, according to section 175A(c), pending approval of the maintenance plan and redesignation request, all applicable nonattainment area requirements shall remain in place.

Section 175A defines the general framework of a maintenance plan. The maintenance plan will constitute a SIP revision and must provide for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. Section 175A further states that the plan shall contain such additional measures, if any, as may be necessary to ensure such maintenance. Because the Act requires a demonstration of maintenance for 10 years after an area is redesignated (not 10 years after submittal of a redesignation request), the State should plan for some lead time for EPA action on the request. In other words, the maintenance demonstration should project maintenance for 10 years, beginning from a date which factors in the time necessary for EPA review and approval action on the redesignation request. In determining the amount of lead time to allow, States should consider that section 107(d)(3)(D) grants the Administrator up to 18 months from receipt of a complete submittal to process a redesignation request. The statute also requires the State to submit a revision of the SIP 8 years after the original redesignation request is approved to provide for maintenance of the NAAQS for an additional 10 years following the first 10-year period [see section 175A(b)].

In addition, the maintenance plan shall contain such contingency measures as the Administrator deems necessary to ensure prompt correction of any violation of the NAAQS [see section 175A(d)]. The Act provides that, at a minimum, the contingency measures must include a requirement that the State will implement all measures contained in the nonattainment SIP prior to redesignation. Failure to maintain the NAAQS and triggering of the contingency plan will not necessitate a revision of the SIP unless required by the Administrator, as stated in section 175A(d).

The following is a list of core provisions that we anticipate will be necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from

nonattainment to attainment. We therefore recommend that States seeking redesignation of a nonattainment area consider these provisions. However, any final EPA determination regarding the adequacy of a maintenance plan will be made following review of the plan submittal in light of the particular circumstances facing the area proposed for redesignation and based on all relevant information available at the time.

a. Attainment Inventory

The State should develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS.[5] This inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include the emissions during the time period associated with the monitoring data showing attainment.[6]

Source size thresholds are 100 tons/year for SO_2, NO_2, and PM-10 areas, and 5 tons/year for Pb based upon 40 CFR 51.100(k) and 51.322, as well as established practice for AIRS data. The source size threshold for serious PM-10 areas is 70 tons/year

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[5]Where the State has made an adequate demonstration that air quality has improved as a result of the SIP (as discussed previously), the attainment inventory will generally be the actual inventory at the time the area attained the standard.

[6]The EPA's current guidance on the preparation of emission inventories for O_3 and CO nonattainment areas is contained in the following documents: "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I" (EPA-450/4-91-016), "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume II" (EPA-450/4-91-014), "Emission Inventory Requirements for Ozone State Implementation Plans" (EPA-450/4-91-010), "Emission Inventory Requirements for Carbon Monoxide Implementation Plans" (EPA-450/4-91-011), "Guideline for Regulatory Application of the Urban Airshed Model" (EPA-450/4-91-013), "Procedures for Emission Inventory Preparation: Volume IV, Mobile Sources" (EPA-450/4-81-026d), and "Procedures for Preparing Emission Inventory Projections" (EPA-450/4-91-019). The EPA does not currently have specific guidance on attainment emissions inventories for SO_2. In lieu thereof, States are referred to the guidance on emissions data to be used as input to modeling demonstrations, contained in Table 9.1 of EPA's "Guideline on Air Quality Models (Revised)" (EPA-450/2-78-027R), July 1987, which is generally applicable to all criteria pollutants. Emission inventory procedures and requirements documents are currently being prepared by OAQPS for PM-10 and Pb; these documents are due for release by summer 1992.

according to Clean Air Act section 189(b)(3). However, the inventory should include sources below these size thresholds if these smaller sources were included in the SIP attainment demonstration. Where sources below the 100, 70, and 5 tons/year-size thresholds (e.g., areas with smaller source size definitions) are subject to a State's minor source permit program, these sources need only be addressed in the aggregate to the extent that they result in areawide growth.

For O_3 nonattainment areas, the inventory should be based on actual "typical summer day" emissions of O_3 precursors (volatile organic compounds and nitrogen oxides) during the attainment year. This will generally correspond to one of the periodic inventories required for nonattainment areas to reconcile milestones. For CO nonattainment areas, the inventory should be based on actual "typical CO season day" emissions for the attainment year. This will generally correspond to one of the periodic inventories required for nonattainment areas.

b. Maintenance Demonstration

A State may generally demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS. Under the Clean Air Act, many areas are required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration should be based upon the same level of modeling. In areas where no such modeling was required, the State should be able to rely on the attainment inventory approach. In both instances, the demonstration should be for a period of 10 years following the redesignation.

Where modeling is relied upon to demonstrate maintenance, each plan should contain a summary of the air quality concentrations expected to result from application of the control strategy. In the process, the plan should identify and describe the dispersion model or other air quality model used to project ambient concentrations (see 40 CFR 51.46).

In either case, to satisfy the demonstration requirement the State should project emissions for the 10-year period following redesignation, either for the purpose of showing that emissions will not increase over the attainment inventory or for conducting modeling.[7] The projected inventory should consider future growth, including population and industry, should be consistent

[7]Guidance for projecting emissions may be found in the emissions inventory guidance cited in footnote 6.

with the attainment inventory, and should document data inputs and assumptions. All elements of the demonstration (e.g., emission projections, new source growth, and modeling) should be consistent with current EPA modeling guidance.[8] For O_3 and CO, the projected emissions should reflect the expected actual emissions based on enforceable emission rates and typical production rates.

For CO, a State should address the areawide component of the maintenance demonstration either by showing that future CO emissions will not increase or by conducting areawide modeling. Preferably, the State should carry out hot-spot modeling that is consistent with the Guideline on Air Quality Models (Revised), in order to demonstrate maintenance of the NAAQS. In particular, if the nonattainment problem is related to a pattern of hot-spots then hot-spot modeling should generally be conducted. However, hot-spot modeling is not automatically required. For example, if the nonattainment problem was related solely to stationary point sources, or if highway improvements have been implemented and the associated emission reductions and travel characteristics can be qualitatively documented, then hot-spot modeling is not required. In such cases, adequate documentation as well as the concurrence of Headquarters is needed.

Any assumptions concerning emission rates must reflect permanent, enforceable measures. In other words, a State generally cannot take credit in the maintenance demonstration for reductions unless there are regulations in place requiring those reductions or the reductions are otherwise shown to be permanent. Therefore, the State will be expected to maintain its implemented control strategy despite redesignation to attainment, unless such measures are shown to be unnecessary for maintenance or are replaced with measures that achieve equivalent reductions (see additional discussion under "Contingency Plan"). Emission reductions from source shutdowns can be considered permanent and enforceable to the extent that those shutdowns have been reflected in the SIP and all applicable permits have been modified accordingly.

Modeling used to demonstrate attainment may be relied upon in the maintenance demonstration where the modeling conforms to current EPA guidance and where the State has projected no significant changes in the modeling inputs during the intervening time. Where the original attainment demonstration may no longer be relied upon, States will be expected to remodel using current

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[8]The EPA-approved modeling guidance may be found in the following documents: "Guideline on Air Quality Models (Revised)," OAQPS, RTP, NC (EPA-450/2-78-027R), July 1986; and "PM-10 SIP Development Guideline," OAQPS, RTP, NC (EPA-450/2-86-001), June 1987.

EPA referenced techniques.[9] This may be necessary where, for example, there has been a change in emissions or a change in the siting of new sources or modifications such that air quality may no longer be accurately represented by the existing modeling.

c. Monitoring Network

Once an area has been redesignated, the State should continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In cases where measured mobile source parameters (e.g., vehicle miles traveled congestion) have changed over time, the State may also need to perform a saturation monitoring study to determine the need for, and location of, additional permanent monitors.

d. Verification of Continued Attainment

Each State should ensure that it has the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS. Sections 110(a)(2)(B) and (F) of the Clean Air Act, as amended, and regulations promulgated at 40 CFR 51.110(k), suggest that one such measure is the acquisition of ambient and source emission data to demonstrate attainment and maintenance.

Regardless of whether the maintenance demonstration is based on a showing that future emission inventories will not exceed the attainment inventory or on modeling, the State submittal should indicate how the State will track the progress of the maintenance plan. This is necessary due to the fact that the emission projections made for the maintenance demonstration depend on assumptions of point and area source growth.

One option for tracking the progress of the maintenance demonstration, provided here as an example, would be for the State to periodically update the emissions inventory. In this case, the maintenance plan should specify the frequency of any planned inventory updates. Such an update could be based, in part, on the annual AIRS update and could indicate new source growth and other changes from the attainment inventory (e.g., changes in vehicle miles travelled or in traffic patterns). As an alternative to a complete update of the inventory, the State may choose to do a comprehensive review of the factors that were used in developing the attainment inventory to show no significant change. If this review does show a significant change, the State should then perform an update of the inventory.

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[9]See references for modeling guidance cited in footnote 8.

Where the demonstration is based on modeling, an option for tracking progress would be for the State to periodically (typically every 3 years) reevaluate the modeling assumptions and input data. In any event, the State should monitor the indicators for triggering contingency measures (as discussed below).

e. Contingency Plan

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9) and those specifically required for O_3 and CO nonattainment areas under sections 182(c)(9) and 187(a)(3), respectively. For the purposes of section 175A, a State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expediently once they are triggered. The plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State. As a necessary part of the plan, the State should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented.

Where the maintenance demonstration is based on the inventory, the State may, for example, identify an "action level" of emissions as the indicator. If later inventory updates show that the inventory has exceeded the action level, the State would take the necessary steps to implement the contingency measures. The indicators would allow a State to take early action to address potential violations of the NAAQS before they occur. By taking early action, States may be able to prevent any actual violations of the NAAQS and, therefore, eliminate the need on the part of EPA to redesignate an area to nonattainment.

Other indicators to consider include monitored or modeled violations of the NAAQS (due to the inadequacy of monitoring data in some situations). It is important to note that air quality data in excess of the NAAQS will not automatically necessitate a revision of the SIP where implementation of contingency measures is adequate to address the cause of the violation. The need for a SIP revision is subject to the Administrator's discretion.

The EPA will review what constitutes a contingency plan on a case-by-case basis. At a minimum, it must require that the State will implement all measures contained in the Part D nonattainment

plan for the area prior to redesignation [see section 175A(d)]. This language suggests that a State may submit a SIP revision at the time of its redesignation request to remove or reduce the stringency of control measures. Such a revision can be approved by EPA if it provides for compensating equivalent reductions. A demonstration that measures are equivalent would have to include appropriate modeling or an adequate justification. Alternatively, a State might be able to demonstrate (through EPA-approved modeling) that the measures are not necessary for maintenance of the standard. In either case, the contingency plan would have to provide for implementation of any measures that were reduced or removed after redesignation of the area.

Summary

As stated previously, this memorandum consolidates EPA's redesignation and maintenance plan guidance and Regions should rely upon it as a general framework in drafting Federal Register notices. It is strongly suggested that the Regional Offices share this document with the appropriate States. This should give the States a better understanding of what is expected from a redesignation request and maintenance plan under existing policy. Any necessary changes to existing Agency policy will be made through our action on specific redesignation requests and the review of section 175A maintenance plans for these particular areas, both of which are subject to notice and comment rulemaking procedures. Thus, in applying this memorandum to specific circumstances in a rulemaking, Regions should consider the applicability of the underlying policies to the particular facts and to comments submitted by any person. If your staff members have questions which require clarification, they may contact Sharon Reinders at (919) 541-5284 for O_3- and CO-related issues, and Eric Ginsburg at (919) 541-0877 for SO_2-, PM-10-, and Pb-related issues.

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USEPA Shapiro Memo on SIP to Redesignate Area to Attainment

September 17, 1993

MEMORANDUM

SUBJECT: State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992

FROM: Michael H. Shapiro
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TO: Director, Air, Pesticides and Toxics Management Division, Regions I and IV
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I. Purpose

The purpose of this memorandum is to address State requests to redesignate from nonattainment to attainment of the ozone and CO NAAQS under section 107. Specifically at issue are requests submitted on or after November 15, 1992 where outstanding Clean Air Act (Act) requirements have not been met. This memo provides guidance on the statutorily-mandated control programs that must be in the EPA-approved SIP if EPA is to approve the redesignation request. The Act's requirements for redesignation and a list of EPA's redesignation policy and guidance are included in Attachments A and B. In the future, further guidance may be provided for redesignations submitted after November 15, 1993.

II. Policy Summary

Section 107(d)(3)(E)(v) of the Act as amended (amended Act) provides that the State must have met all applicable requirements of section 110 and part D in order to be redesignated. Furthermore, section 107(d)(3)(E)(ii) provides that the State must have a fully-approved SIP for the area seeking redesignation.

The EPA is interpreting these section 107 provisions to require satisfactory completion of the current Act planning requirements. Specifically, before EPA can act favorably upon any State redesignation request, the statutorily-mandated control programs of section 110 and part D (that were due prior to the time of the redesignation request) must have been adopted by the State and approved by EPA into the SIP.

Thus, with respect to redesignation requests submitted on or after the Act's deadline for submittal of the required programs, States must generally adopt and provide for implementation of their regulations for all of the programs that were due. States must submit these plans to EPA for incorporation into the SIP.[1] This would include such requirements as emissions inventories and/or emission statements. Such requirements must be met in order for the area to have a fully-approved SIP that meets all requirements applicable to the area under section 110 and part D.

The amended Act, however, also provides that upon redesignation, a State may move measures from the implemented SIP to the contingency plan portion of the SIP if the State demonstrates that such measures are not needed for maintaining the NAAQS. Many areas sought redesignation at or about the same time they were required to adopt and implement the requirements due on November 15, 1992. In many instances, the State will be able to immediately move these measures to the contingency plan without implementation.

III. Exceptions to Policy

The EPA decided to review the requirements to determine if something less than full adoption of these regulations would be

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[1]Note that this represents a departure from earlier guidance for part D new source review (NSR) regulations.

acceptable under the Act for areas seeking redesignation. Exceptions to this policy on the States' need to complete the full planning and adoption process for the November 15, 1992 mandated programs are very limited. The language in the Act allows a degree of flexibility in only four program areas. These are: (1) basic inspection and maintenance (I/M), (2) annual updates of vehicle miles traveled (VMT) forecasts and annual estimates of actual VMT for CO nonattainment areas, (3) nitrogen oxides (NOx) reasonably available control technology (RACT), and (4) small business programs (SBP).

These exceptions are only applicable in areas for which EPA approves a redesignation. The States should be aware that if EPA denies a redesignation request, rules submitted in accordance with this guidance may also be disapprovable. Finally, because EPA anticipates issuing onboard regulations by January 1994, States seeking redesignation of areas classified as moderate may have some flexibility with respect to the Stage II requirement.

Our guidance for State submittals covering these four programs is described in the following paragraphs.

Basic I/M

For areas where maintenance plans do not rely on implementation of a basic I/M program immediately following redesignation, the I/M component of the SIP should include:

1. Legislative authority for basic I/M such that implementing regulations can be adopted without any further legislative action.

2. A provision in the SIP providing that basic I/M be placed in the contingency measures portion of the maintenance plan upon redesignation.

3. An enforceable schedule and commitment by the Governor or his designee for adoption and implementation of a basic I/M program upon a specified, appropriate triggering event.

Note that, for purposes of consideration of a redesignation request submitted after November 15, 1992, the commitment as described in the I/M regulation (see 57 FR 52950, November 5, 1992) is not sufficient to meet the Act's requirement for a fully-approved SIP.

In addition, please note that, EPA's final I/M regulations in 40 CFR part 51 require a fully-adopted I/M program by November 15, 1993. At this time, our preliminary interpretative

guidance on basic I/M in this memo is not discussed in the I/M regulations. Therefore, EPA is proceeding to establish this interpretation through regulatory action, thus enabling EPA to accept legislative authority and a commitment to adopt and implement basic I/M regulations for those areas being redesignated to attainment.

VMT Forecasting

The VMT forecasting SIP for CO should include:

1. Annual forecasts of VMT (i.e., average daily VMT for the peak 3-month CO seasons for 1993, 1994, and 1995 in moderate areas above 12.7 ppm, and until 2000 in serious areas).

2. An enforceable commitment by the Governor or his designee to estimate actual annual VMT for each of these years (by September 30 of the following year) and to update the forecast of the VMT in the remaining years.

3. A request that the commitment be moved to the contingency plan portion of the SIP upon redesignation, becoming a contingency provision triggered by a specified triggering event.

4. Adopted contingency measures to reduce CO emissions. The implementation of such measures is contingent upon either: (a) an annual estimate of actual VMT or updated forecast of VMT exceeding the previous forecast for that year, or (b) the area failing to attain by the CO attainment deadline. These contingency measures must meet the requirements of section 187(a)(3) as interpreted by the April 16, 1992, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," including the requirement that no further action by the State is needed for them to take effect.

NOx RACT

Section 182(f) provides that States may request an exemption from the NOx RACT requirements. The NOx RACT requirements of section 182(f) do not apply if additional reductions of NOx would not contribute to attainment.[2] In an area that did not implement

[2]Note that the section 182(f) exemption for NOx RACT and NSR requirements described in this section is applicable only for

the section 182(f) NOx requirement but did meet the ozone standard, as demonstrated by adequate monitoring data consistent with EPA guidance, it is clear that the additional NOx reductions required by section 182(f) would not contribute to attainment, although they might contribute to maintenance. Therefore, EPA believes that if a State submits a redesignation request along with a section 182(f) exemption request based on monitoring data demonstrating attainment of the ozone NAAQS, further documentation is not required. The State may follow one of two approaches in making such a submittal:

1. Submit a redesignation request along with a section 182(f) exemption request based solely upon monitoring data showing that the area's air quality is meeting the ozone NAAQS; and submit a maintenance plan SIP revision, which includes a NOx RACT program as a contingency measure. In lieu of adopted NOx RACT rules, such a NOx RACT program may consist of an enforceable schedule and commitment by the Governor or his designee to adopt and implement the NOx RACT rules upon a specified, appropriate triggering event.

2. An exemption request based on both ambient monitoring and urban airshed modeling consistent with EPA guidance that shows additional NOx reductions would not contribute to attainment in the area. In this case, NOx RACT rules do not have to be included as a contingency measure of the maintenance plan.

SBP

For several reasons, the Act can be interpreted as not requiring the section 507 SBP submittal in order for EPA to approve a redesignation request. The SBP submittal is required regardless of whether there are any designated nonattainment areas within the State. In addition, the SBP is not a control measure intended to contribute to the emission reductions achieved by an area; rather it is a service provided to help small businesses comply with requirements of the Act. For the above reasons, EPA is interpreting the SBP as not being an applicable requirement for any specific nonattainment area that is seeking redesignation. However, EPA will continue to ensure that States make SBP submittals in a timely fashion.

Stage II Vapor Recovery

States outside an ozone transport region, since only those States fall under the section 182(f) "contribute to attainment" provision.

Stage II vapor recovery remains an applicable requirement for moderate ozone nonattainment areas until EPA promulgates onboard vapor recovery regulations. Section 202(a)(6) of the Act provides that once onboard regulations are promulgated, the Stage II regulations required under section 182(b)(3) are no longer applicable for moderate ozone nonattainment areas. Therefore, final redesignation for a moderate nonattainment area that occurs after EPA's onboard regulations are promulgated does not have to include a Stage II SIP control program. For redesignation requests that are submitted before EPA promulgates onboard rules and that do not include Stage II rules for moderate areas, Regional Offices may prepare rulemaking actions proposing to approve the redesignation, if appropriate, as long as final approval occurs after EPA promulgates onboard regulations.

IV. Coordination of SIP Submittals and Redesignation Requests

If the State elects to follow the approach above, the State should submit the SIP control program as described above along with the redesignation request and maintenance plan. The EPA will review the required SIP submittal(s) against EPA policy and guidance and in coordination with the redesignation request and maintenance plan. Approvability of the redesignation is directly related to the approvability of the SIP submittals (i.e., EPA is precluded from approving a redesignation to attainment if the SIP is not approvable).

As a general policy, a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment. States should continue to implement existing control strategies in order to maintain the standard. However, section 175A recognizes that States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard. The type of demonstration necessary is dependent upon the pollutant for which the area has been redesignated to attainment.

In order to make such a demonstration for an area redesignated to attainment for CO, EPA believes that the State could submit a revised control strategy demonstration showing that the measure is not necessary to maintain the standard. For ozone, the State would need to submit an attainment modeling demonstration consistent with EPA's current "Guideline on Air

Quality Models," showing that the control measure is not needed to maintain the standard. The EPA intends to be very cautious in approving such revisions in cases where the control measures were implemented during the time the area attained the standard; the State's demonstration should indicate an ample margin of safety with respect to maintenance of the standard.

V. Conclusion

In summary, full adoption of all of the statutorily-required programs, as well as a schedule and an enforceable commitment for an implementation date, are necessary for redesignation to attainment from nonattainment for ozone or CO if the redesignation request is submitted after the statutory due date for the program. The few exceptions to this requirement are basic I/M, annual updates of VMT forecasts, and estimates of actual VMT, NOx RACT, and SBP.

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Attachment B

The EPA policies for implementing section 107 of the Act for redesignations are contained in the following memorandums.

1. "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

2. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

4. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992.

In the event that EPA does not approve the redesignation, the applicable I/M program requirements and guidance can be found in 57 FR 52950, November 5, 1992 and in 40 CFR part 51. The applicable VMT forecast guidance is described in the document entitled, "Section 187 VMT Forecasting and Tracking Guidance," January 1992.